IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1915.

No. 148

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,
Plaintiff in Error,

vs.

STATE PUBLIC UTILITIES COMMISSION OF ILLINOIS, ex rel., POEHLMANN BROS. CO.,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

Brief for Defendant in Error.

M. F. GALLAGHER,
COUNSEL FOR DEFENDANT IN ERROR.

BARNARD & MILLER PRINT, CHICAGO.

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Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

There is here for review a judgment of the Supreme Court of the State of Illinois, affirming an order of the Board of Railroad & Warehouse Commissioners which prescribed maximum railroad rates between two points in Illinois. (For this case below, see 268 Ill. 49.) The opinion of the Supreme Court of Illinois is printed as an Appendix to the motion heretofore filed by this defendant in error to dismiss, or affirm, or transfer to summary docket.

The order of the Railroad and Warehouse Commission of Illinois was entered on October 25, 1913. (See Trans., pp. 10, 11, 12.) Thereafter, and on January 1, 1914, the Board of Railroad and Warehouse Commissioners was superseded by the State Public Utilities Commission of Illinois by virtue of the statute entitled an "Act to Provide for the Regulation of Public Utilities," approved June 30, 1913, in force January 1, 1914. (Hurd's Revised Statutes of Illinois for 1915-1916, p. 2016.)

This statute requires the State Public Utilities Commission to enforce the findings, orders and decisions of the Board of Railroad and Warehouse Commissioners previously made. (See Section 82.) The statute creating the Board of Railroad and Warehouse Commissioners and prescribing its powers and duties, in force at the time of the entry of the order here involved, may be found in "Laws of Illinois, Forty-seventh General Assembly," page 471. The sections of this statute referring to the powers and duties of the Board of Railroad and Warehouse Commissioners is herewith printed as an Appendix.

The salient facts of the case are as follows:

Poehlmann Bros. Company is an Illinois corporation engaged in the growing and sale of flowers, and has its greenhouses at Morton Grove, Cook County, Illinois. (Trans., page 24.) Morton Grove is a station on the Chicago, Milwaukee & St. Paul Railway, three miles northwest of the corporate limits of Chicago. In its greenhouses, Poehlmann Bros. Company burn about 30,000 tons of coal each year and use about 500 cars of manure. (Trans., page 15.)

Over 95 per cent. of the coal used by Poehlmann Bros. Company is mined in Illinois (Trans., page 15), and the manure comes chiefly from the stockyards in Chicago. (Trans., page 28.) This freight all moves in carloads to Morton Grove via the Chicago, Milwaukee & St. Paul Railway, which receives the cars at Galewood, a junction station inside of Chicago, where the cars are transferred to it by other carriers. (Trans., page 27.) The distance from Galewood to Morton Grove, being the entire haul involved in this case, is about 12 miles. (Trans., page 28.) There are no joint through rates on coal to Morton Grove from points in Illinois, or from points in other states. (Trans., pages 11, 16, 27 and 28.) Both on the interstate and intrastate shipments the rate up to Galewood is a separate rate, and the rate from Galewood to Morton Grove is a separate rate. The rates of the carriers hauling the coal to Chicago vary according to point of origin, but in all cases the charge of the Chicago, Milwaukee & St. Paul Railway Company for carrying the coal from Galewood to Morton Grove is 40 cents per ton. This rate of 40 cents a ton is a charge of the Chicago, Milwaukee & St. Paul Railway, published by that carrier, for which it is alone responsible. (Tariff C. M. & St. P. Ry., G. F. D. 2500-B. Trans., pages 3 and 28.)

July 18, 1913, Poehlmann Bros. Company filed a petition with the Railroad and Warehouse Commission charging that the rates of 40 cents a ton on coal and on manure from Galewood to Morton Grove were unjust and unreasonable, and after a hearing the Railroad and Warehouse Commission so found, and ordered that rates of 20 cents per ton on coal

and 25 cents per ton on manure were just and reasonable maximum rates to be charged for this service by the Chicago, Milwaukee & St. Paul Railroad. (Trans., page 12.)

The complaint and the proceedings before the Railroad and Warehouse Commission were confined to transportation conducted wholly in Illinois, and relief was asked solely as to traffic originating and delivered in Illinois. (See prayer of complaint, Trans., page 5.) The complaint, paragraph 3 (Trans., page 3) shows the distance from Galewood to Morton Grove of 11 miles, and alleges "the said Chicago, Milwaukee & St. Paul Railway Company charges and collects for moving a car of bituminous coal from Galewood to Morton Grove, 40 cents per net ton; and that said carrier charges and collects the charges of 40 cents per ton for moving a car of manure from Galewood to Morton Grove. The complainant further shows that there are no through rates from mines in Illinois to Morton Grove." (Trans., page 3.)

Complaint further stated that the complainant often protested against the rate of 40 cents a ton, but its protests were unavailing. (Trans., 5.)

Paragraph 4 of the complaint is as follows:

> "Complainant further shows that a charge of 40 cents per net ton on coal and of 40 cents on manure and other materials, for the service of said Chicago, Milwaukee & St. Paul Railway for moving said cars from Galewood to Morton Grove, is unjust, unreasonable, excessive and discriminatory, and in violation of the provisions of the said Act to establish a Board of Railroad and Warehouse Commissioners and prescribe their duties, approved April 13, 1871,

and the acts amendatory thereof and supplemental thereto."

In paragraph 11 of the complaint, it is alleged that the complainant is grievously discriminated against and that the charges of 40 cents a ton on coal and manure made by the Chicago, Milwaukee & St. Paul Railroad are unjust and unreasonable, excessive and discriminatory. (Trans., page 4.)

At the hearing before the State Commission evidence was introduced both by the petitioner and the railroad company. The petitioner attacked the reasonableness of the 40-cent rate which was a traffic proposition in and of itself. (Trans., 29.)

The rates of 40 cents a ton on coal and manure were shown to be unreasonably high by a comparison with a great number of other rates for hauls of similar distances published by this carrier and other carriers in and around Chicago. (Trans., 31 to 40.) The rate of 40 cents was particularly compared with the rate from Galewood station to Edgewater, through a more congested part of Cook County, for practically the same distance, which was 20 cents a ton. This rate of 20 cents a ton from Galewood to Edgewater was published and maintained by the Chicago, Milwaukee & St. Paul Railroad. (Trans., 45.) The carrier made practically no defense on the merits. (See Trans., pp. 40, 41, 42.)

The finding of the Railroad and Warehouse Commissioners was as follows:

> "After a careful investigation of the rates charged by the defendant Chicago, Milwaukee & St. Paul Railway Company from Galewood to other stations on its lines of road in the vicinity

> of Morton Grove, and also an investigation of the rates charged by other defendant roads in that locality, for similar distance, when compared with the charge made by the defendant Chicago, Milwaukee & St. Paul Railway Company from Galewood to Morton Grove, the Commission believes that said charge of 40 cents per net ton to be an unreasonable charge." (Trans., page 12.)

The order of the State Commission was confined to the movement between Galewood and Morton Grove. The order reads (Trans., page 12):

> "It is therefore ordered, adjudged and decreed by the Commission that the said rate of 40 cents per net ton on coal from Galewood to Morton Grove be, and the same is hereby reduced and fixed at a charge of not to exceed 20 cents per net ton on coal, and not to exceed 25 cents per net ton on manure from Galewood to Morton Grove, and the defendant, Chicago, Milwaukee & St. Paul Railway Company, is hereby directed to cease and desist from making any greater charge than hereinabove specified on movements of coal and manure from Galewood to Morton Grove, the Commission finding that the charge herein made and specified, is a reasonable charge therefor."

It is true, the complainant asked the Railroad and Warehouse Commission to establish *through rates from mines in Illinois to Morton Grove.* This the Commission did not do, but finding that the rate from Galewood to Morton Grove was a separately established and maintained rate of the Chicago, Milwaukee & St. Paul Railway, and was unreasonable and excessive as charged in the complaint, it reduced that rate to a fair basis. This was in accordance with the general prayer of the complaint "for such other and further order as this Commission may

deem just and reasonable in the premises." (Trans., page 5.)

From this order an appeal was taken by the railroad company to the Circuit Court of Sangamon County, State of Illinois, and the order was affirmed by that court. A further appeal was then taken to the Supreme Court of Illinois, and the judgment of the Circuit Court of Sangamon County was affirmed. Thereafter this writ of error was sued out.

An analysis of the specifications of error filed by the plaintiff in error (Trans., pp. 49, 50, 51), will show that the sole question raised by the record is as follows:

Does an order of the Railroad and Warehouse Commission of Illinois fixing a maximum rate between two points in Illinois, for a railroad haul entirely in that state, applicable to traffic only that originates in Illinois, so far encroach upon the power and agencies of the Federal Government to regulate commerce among the states that the order is void?

POINTS AND AUTHORITIES.

I.

THERE IS NO COLOR OF GROUND FOR THE CONTENTION THAT THE ORDER WHOSE VALIDITY IS DRAWN IN QUESTION VIOLATES PARAGRAPH 3 OF SECTION 8 OF ARTICLE I OF THE CONSTITUTION OF THE UNITED STATES, AS STATED IN THE FIRST SPECIFICATION OF ERROR. ALL THE SERVICES OF THIS CARRIER, PERFORMED WHOLLY IN ILLINOIS, ARE AMENABLE TO STATE REGULATION.

Simpson v. *Shepard* (Minnesota Rate Cases, 230 U. S. 352.

Munn v. *Illinois*, 94 U. S. 113.

Wabash Ry. v. *Illinois*, 118 U. S. 557; 565.

Oregon Railroad & Navigation Co. v. *Campbell et al.*, 230 U. S. 525.

Louisville & Nashville R. R. Co. v. *Garrett*, 231 U. S. 298; 310.

Waters-Pierce Oil Company v. *Texas*, 177 U. S. 28.

Chesapeake & Ohio Railway Company v. *Kentucky*, 179 U. S. 388.

Chicago, Milwaukee & St. Paul Ry. v. *State of Iowa*, 233 U. S. 334.

Illinois Central Railroad Company v. *Mulberry Hill Coal Co.*, 238 U. S. 275.

Illinois Central R. R. Co. v. *Fuentes et al.*, 236 U. S. 157; 164.

Missouri Pacific Ry. Co. v. *Larabee Flour Mills Company*, 211 U. S. 612.

Wilmington Transportation Company v. *California Railroad Commission*, 236 U. S. 151; 156.

Erie R. R. v. *Purdy*, 185 U. S. 148.
Northern Pacific Ry. v. *North Dakota*, 216 U. S. 579.
Minneapolis and St. Lauis R. R. Co. v. *Minnesota*, 186 U. S. 257.
Atlantic Coast Line v. *Mazursky*, 216 U. S. 122.
Judson on Interstate Commerce, 3d Ed., Sec. 123.

II.

THIS COURT WILL ACCEPT THE CONSTRUCTION OF THE ORDER BY THE SUPREME COURT OF ILLINOIS WHICH CONFINED ITS OPERATIONS AND EFFECT STRICTLY TO A TRANSPORTATION SERVICE PERFORMED WHOLLY IN THAT STATE.

Waters-Pierce Coal Co. v. *Texas*, 177 U. S. 28.
Chesapeake & Ohio Ry. Co. v. *Kentucky*, 179 U. S. 388.
Erie R. R. Co. v. *Purdy*, 185 U. S. 148.
Northern Pacific Ry. Co. v. *North Dakota*, 216 U. S. 579.

III.

THERE IS NO SPECIFICATION OF ERROR RAISING THE QUESTION OF THE SUFFICIENCY OF THE EVIDENCE ON WHICH TO BASE THE ORDER PRESCRIBING THE MAXIMUM RATES. IF THAT QUESTION WAS EMBRACED IN THE SPECIFICATIONS OF ERROR THE SUFFICIENCY OF THE EVIDENCE IS NOT OPEN FOR REVIEW UPON THIS WRIT OF ERROR.

Hedrick v. *A. T., etc., Ry. Co.*, 167 U. S. 673.
Merchants' Bank v. *Pennsylvania*, 167 U. S. 461.

Klinger v. *Missouri*, 13 Wallace 257; 263.

Atchison Railroad Co. v. *Matthews*, 174 U. S. 96; 97.

Chrisman v. *Miller*, 197 U. S. 313.

King v. *West Virginia*, 216 U. S. 92.

Clipper Mining Co. v. *Eli Mining & Land Co.*, 194 U. S. 220.

IV.

THIS COURT WILL ACCEPT THE DECISION OF THE SUPREME COURT OF ILLINOIS AS CONCLUSIVE AS TO ALL QUESTIONS OF LOCAL LAW AND AS TO THE POWERS OF THE BOARD OF RAILROAD AND WAREHOUSE COMMISSIONERS AND AS TO THE REGULARITY OF THE PROCEDURE BEFORE THAT BOARD.

Klinger v. *Missouri*, 13 Wallace (U. S.) 257; 263.

Tripp v. *Santa Rosa Street Railroad Co.*, 144 U. S. 126.

Seneca Nation v. *Christy*, 162 U. S. 283.

Gulf C. & S. F. R. Co. v. *Texas*, 204 U. S. 403.

Siler v. *L. & N. R. R. Co.*, 213 U. S. 175.

Klinger v. *State of Missouri*, 13 Wall. 257.

Rankin v. *Emigh*, 218 U. S. 27.

Chrisman v. *Miller*, 197 U. S. 313.

King v. *West Virginia*, 216 U. S. 92.

Clipper Mining Co. v. *Eli Mining and Land Co.*, 194 U. S. 220.

Waters-Pierce Oil Co. v. *Texas*, 212 U. S. 86.

V.

THERE IS NO FOUNDATION IN THE SPECIFICATIONS OF ERROR OR IN THE RECORD FOR A CONTENTION AT BAR THAT THE RATES FIXED BY THE STATE COMMISSION ARE CONFISCATORY. (STATEMENT OF ERRORS RELIED UPON, TRANS., PAGE 49.) WHERE A CARRIER CLAIMS THAT A RATE FIXED BY A COMMISSION RESULTS IN CONFISCATION OF PROPERTY UNDER THE GUISE OF REGULATION, A GRAVE QUESTION OF FACT IS RAISED AND THE BURDEN IS UPON THE CARRIER TO CLEARLY SHOW ALL THE FACTS NECESSARY TO SATISFY THE MIND OF THE COURT THAT THE CHARGE FIXED IS SO LOW AS TO BE CONFISCATORY. THERE IS A TOTAL ABSENCE OF EVIDENCE IN THIS RECORD TO SUPPORT SUCH A CONCLUSION.

Atlantic Coast Line v. *Florida*, 203 U. S. 256.

Judson on Interstate Commerce, 3d Ed., Sec. 133.

Seaboard Air Line v. *Florida*, 203 U. S. 261.

Northern Pacific v. *North Dakota*, 216 U. S. 579.

Wood v. *Vandalia Railroad Co.*, 231 U. S. 1.

L. & N. R. R. Co. v. *Garrett et al.*, 231 U. S. 298.

L. & N. R. R. v. *Finn et al.*, 235 U. S. 601.

VI.

RATES FIXED BY STATE AUTHORITY ARE PRESUMED TO BE REASONABLE AND JUST.

Cases cited under Point V, *supra*.

VII.

THE REASONABLENESS OF INTRASTATE RATES IS A MATTER WITHIN THE PROVINCE OF THE STATE COMMISSION AND THE COURT WILL NOT SUBSTITUTE ITS JUDGMENT FOR THAT OF THE COMMISSION AS TO WHAT IS A FAIR RATE.

Minnesota Rate Cases, 230 U. S. 352; 433, and cases there cited.

ARGUMENT.

I.

THE ORDER OF THE BOARD OF RAILROAD AND WAREHOUSE COMMISSIONERS HERE INVOLVED FIXES A MAXIMUM RATE BETWEEN TWO POINTS IN ILLINOIS, FOR A RAILROAD HAUL ENTIRELY IN THAT STATE, APPLICABLE TO TRAFFIC ONLY THAT ORIGINATES IN ILLINOIS, AND SUCH ORDER, THEREFORE, DOES NOT ENCROACH UPON THE POWER AND AGENCIES OF THE FEDERAL GOVERNMENT TO REGULATE COMMERCE AMONG THE STATES.

The foregoing is the only proposition of law for argument upon this record, and the contention of the plaintiff in error in respect thereto has been recently, after great consideration, settled adversely to it by the decision of this court in *Minnesota Rate* Cases, 230 U. S., pp. 352, 396, 412, 413, 414, 415, 421, 431, 432 and 433, and by the decisions in *Oregon R. R. and Navigation Co.* v. *Campbell*, 230 U. S. 525, and *L. and N.* v. *Garrett*, 231 U. S. 298, 319.

The order attacked does not burden, regulate or unduly discriminate against interstate commerce.

The interpretation and effect given by the Supreme Court of Illinois to the order is as follows (*C. M. & St. P. Ry.* v. *Public Utilities Commission*, 268 Ill., 49, 52):

> "* * * Neither the complaint nor the order in any way related to or affected inter-State commerce. The complaint was confined to charges on coal shipped to the complainant from points in this State,

the recitals of the order related only to such shipments, and the order did not purport to fix a rate on any inter-State shipment. The argument is, that because a car of coal coming to Galewood from another State would be hauled over the same track by the appellant to Morton Grove and the appellant could not discriminate and charge more for hauling that car than for a car coming from a mine in this State, the commission has discriminated against inter-State commerce and placed an unlawful burden upon it,—which is saying that the State has no concern with or control over rates for transportation which is purely local within its borders if the carrier performs similar service in inter-State commerce. We do not understand that to be the law, or that any doubt has ever been entertained of the authority of the State to regulate rates for transportation that is wholly within the State, although the authority of the State does not extend to the regulation of charges for inter-State transportation or to discrimination against inter-State commerce * * *."

The Supreme Court of Illinois having decided and declared that the order involved in this case relates to and is intended to relate only to transportation which begins and ends and moves entirely in Illinois, this court will accept such construction and delimitation of the order.

Waters-Pierce Coal Company v. *Texas*, 177 U. S. 28.

In *Chesapeake & Ohio Railway Company* v. *Kentucky*, 179 U. S. 388, the Court of Appeals of Kentucky construed the separate coach law of that state and declared the same operative only within the state and applicable only to domestic commerce, and this court accepted that construction and held therefore

that the statute did not infringe upon the exclusive power of Congress to regulate interstate commerce.

To the same effect, see *Tullis* v. *Lake Erie & Western R. R.*, 175 U. S. 348, 353.

In *Erie Railroad* v. *Purdy*, 185 U. S. 148, a state statute regulating commerce was attacked because it was a burden upon interstate commerce. This court dismissed the writ of error for want of jurisdiction, saying (p. 152):

> "* * * But the Court of Appeals held that the statute was intended to apply and applied only to domestic transportation. We accept this view as to the scope and operation of the statute, and assume that it does not require the railroad company to issue mileage tickets covering the transportation of passengers from one state to another state. *So that no federal question arising under the commerce clause of the Constitution is here for determination.*"

This court further said in that case (p. 150):

> "* * * That such a statute, if limited in its scope to transportation wholly within the limits of the state, is a valid exercise of state authority settled by the decision of the Supreme Court of the United States in *Stone* v. *Farmers' Loan & Trust Co.*, 116 U. S. 307, where it was said: 'It (the state) may, beyond all question, by the settled rule of decision in this court, regulate freights and fares for business done exclusively within the state.' This doctrine has never been overruled or limited; on the contrary, it is fully recognized in the later cases. *Hennington* v *Georgia*, 163 U. S. 299; *W. U. Tel. Co.* v. *James*, 162 U. S. 650; *L. S. & M. S. R. Co.* v. *Ohio*, 173 U. S. 285. In *Wabash etc. Ry. Co.* v. *Illinois*, 118 U. S. 557, a statute of Illinois regulating fares was held void solely on the ground that the act, *as interpreted by the Supreme Court of the state*, included cases of transportation partly

within and partly without the state. It was there stated: *'If the Illinois statute could be construed to apply exclusively to contracts for a carriage which begins and ends within the state, disconnected from a continuous transportation* through or into other states, there does not seem *to be any difficulty in holding it to be valid.'* There is nothing in the language of the statutes now before us that shows they were intended to affect any but interstate transportation; but if their interpretation is doubtful 'the courts must so construe a statute as to bring it within the constitutional limits, if it is susceptible of such construction.' *Sage* v. *City of Brooklyn*, 89 N. Y. 189; *People* v. *Terry*, 108 N. Y. 1. Within this principle these statutes must be construed as applying to transportation wholly within the state, and as so construed they do not infringe upon the constitution of the United States."

In *Northern Pacific Ry. Co.* v. *North Dakota*, 216 U. S. 579, the holding of the state court that the rates applied only to transportation within the state, was held to remove the case from any possibility of infringement upon the commerce clause.

It is clear and indisputable that the order here involved is confined to commerce that begins and ends in Illinois. It fixes a charge for an entirely local haul, the transportation of certain commodities for a distance of eleven and fraction miles all in one county in Illinois. If this order is void because it infringes upon the power of the federal government to regulate commerce, then all state authority over rates is extinguished, and there is now no governmental agency that could regulate the charge of the plaintiff in error for this service.

As the order here attacked prescribes rates for a

railroad transportation entirely within the state, its validity is unquestionable.

In the *Minnesota Rate Cases*, 230 U. S. 352, this court expresses its conclusion after great deliberation and exhaustive analysis of previous decisions, as follows (p. 420):

> "Having regard to the terms of the Federal Statute, the familiar range of state action at the time it was enacted, the continued exercise of state authority in the same manner and to the same extent after its enactment, and the decisions of this court recognizing and upholding this authority, we find no foundation for the proposition that the Act to Regulate Commerce contemplated interference therewith." * * *

The court further said (p. 431):

> "* * * It thus clearly appears that, under the established principles governing state action, the State of Minnesota did not transcend the limits of its authority in prescribing the rates here involved, assuming them to be reasonable intrastate rates. It exercised an authority appropriate to its territorial jurisdiction and not opposed to any action thus far taken by Congress."

It is therefore now the law that the order here involved was within state authority and in no way encroaches upon the present regulative system of the Federal Government.

No doubt has been entertained as to the authority of the states to regulate rates for transportation wholly intrastate.

Minnesota Rate Cases, *supra*, page 415.

The fact that the order here involved through the consequences of competition under interstate rates

may affect interstate commerce indirectly, does not withdraw it from the "undeniable power of the state."

Minnesota Rate Cases, *supra*, page 426, page 410.

This court is asked in this case to do that, which, after great consideration it declined to do in the *Minnesota Rate Case, i. e.*, "under the guise of construction to provide a more comprehensive scheme of regulation than Congress has decided upon."

Minnesota Rate Case, *supra*, page 433.

In the case last cited, which seems to finally remove from the field of debate the precise question presented in the instant case, this court further said (p. 420):

> "Congress did not undertake to say that the intrastate rates of interstate carriers should be reasonable or to invest its administrative agency with authority to determine their reasonableness. Neither by the original act nor by its amendment did Congress seek to establish a unified control over interstate and intrastate rates; it did not set up a standard for intrastate rates, or prescribe, or authorize the Commission to prescribe, either maximum or minimum rates for intrastate traffic. It cannot be supposed that Congress sought to accomplish by indirection that which it expressly disclaimed, or attempted to override the accustomed authority of the states without the provisions of a substitute. *On the contrary, the fixing of reasonable rates for intrastate transportation was left where it had been found; that is, with the states and the agencies created by the states to deal with that subject. Missouri Pacific Ry. Co.* v. *Larabee Mills*, 211 U. S. 612, 620, 621."

The power of the state in the exercise of which

this order was promulgated has never been doubted by this court. At page 412 of the same opinion this court said:

> "State regulation of railroad rates began with railroad transportation. * * * (P. 416.) The doctrine was thus fully established that the state could not prescribe interstate rates but could fix reasonable intrastate rates throughout this territory. The extension of railroad facilities has been accompanied at every step by the assertion of this authority on the part of the states, and its invariable recognition by this court."

The state power of regulation is co-extensive with state boundaries and embraces all points within the state. The contentions of counsel in the Minnesota Rate case made it necessary for this court to thus clearly define the scope of the state power (page 417):

> "Similarly, the authority of the state to prescribe what shall be reasonable charges of common carriers for intrastate transportation, unless it be limited by the exertion of the constitutional power of Congress, is state-wide. As a power appropriate to the territorial jurisdiction of the state, it is not confined to a part of the state, but extends throughout the state—to its cities adjacent to its boundaries as well as to those in the interior of the state. To say that this power exists, but that it may be exercised only in prescribing rates that are on an equal or higher basis than those that are fixed by the carrier for interstate transportation, is to maintain the power in name while denying it in fact. It is to assert that the exercise of the legislative judgment in determining what shall be the carrier's charge for the intrastate service is itself subject to the carirer's will. But this state-wide authority controls the carrier and is not controlled by it; and the idea that the power

> of the state to fix reasonable rates for its internal traffic is limited by the mere action of the carrier in laying an interstate rate to places across the state's border, is foreign to our jurisprudence."

On the appeal of the case of *Ames* v. *Union Pacific Railway Co.*, "it was argued" said this court in its opinion in the *Minnesota Rate Case* (p. 426)

> "that the local traffic was carried over the same tracks, in the same trains and often in the same cars with the interstate traffic; that to separate the cost of carrying the one sort of traffic from that of the other was a 'manifest impossibility'; and that it was a necessary consequence of existing conditions that, if Nebraska controlled the local rates, it at the same time controlled the interstate rates. But this contention was not sustained and the affirmance of the decree was placed upon the distinct ground that the rates were confiscatory."

Another decision of this court precisely in point is *Oregon R. R. & Navigation Co.* v. *Campbell*, 230 U. S. 525. In that case the Railroad Commission of Oregon prescribed maximum freight rates between Portland and other points in Oregon on the line of the Oregon Railroad & Navigation Company. In affirming the validity of the order this court said (p. 535):

> "It is insisted that the order applied to interstate traffic, that is, to traffic originating outside the state and still moving, on its transportation from Portland to other points in the state, in interstate commerce. The court below did not so construe the order, and we do not so construe it. The Railroad Commissoin of Oregon had no power to fix rates for interstate transportation, or any part of it, and we find no ground for the conclusion that it attempted to do so.

The order must be taken as applicable solely to intrastate transportation. And, in this view, so far as the averments of the bill attack the order as one which by its terms relates to property transported in interstate commerce, they are insufficient to entitle the complainant to relief.

Whether the order governs particular shipments must depend on the facts of each case, that is, upon the question whether the traffic is interstate or intrastate. If it were sought to compel the application of the intrastate rate to goods which were properly to be regarded as moving in interstate commerce, the complainant would have its remedy. But it would be necessary to show the actual conditions and that the order, although valid in its proper operation, was being misapproved with respect to particular transactions. The bill failed to make a case of this sort. Upon this point the court below said: 'If the order be valid, as it is held to be, then all shipments or commerce which are intrastate in character must be controlled by the order; all that are not are not affected by it. If question arises as to any particular shipment or any particular commodity to be moved, or in process of transportation, it might be settled by carrying the matter to the commission; or, if the commission unlawfully exacts the state rate upon interstate traffic, I see no reason why it may not be enjoined in any court of competent jurisdiction. These special cases must necessarily be determined as they arise, as it is impossible by a general decree, to determine in advance what specific commodities and the transportation thereof constitue interstate and what intrastate commerce.' 177 Fed. Rep. 318, 320.

We are of the opinion that the ruling was right.

Assuming that the order applies exclusively to intrastate transportation, the question with respect to asserted interference with interstate

> commerce by reason of the relation of intrastate rates to interstate rates is essentially the same as that presented in the *Minnesota Rate Cases, ante,* p. 352, and the same conclusion must be reached."

So here the contention that this order affects interstate commerce "by reason of the relation of intrastate rates to interstate rates is essentially the same as that presented in the Minnesota Rate Cases * * * and the same conclusion must be reached."

In *L. & N. R. R. Co.* v. *Garrett,* 231 U. S. 298, this court in speaking of an attack upon an order made by the railroad commission of Kentucky, said (p. 319):

> "It is also objected that the order of the Commission constitutes an unwarrantable interference with, and a regulation of, interstate commerce. The questions thus raised cannot be distinguished from those which were considered and decided in The Minnesota Rate Cases, 230 U. S. 352."

The foregoing recent decisions of this court upon the precise point in argument are conclusive. They leave open but one conclusion: The power of the state to regulate charges of common carriers for a service between two points within the state, in connection with traffic that originates and moves wholly within the state, remains unshaken, completely established and undeniable.

II.

THE ORDER UNDER CONSIDERATION DOES NOT CONTRAVENE THE ACT TO REGULATE COMMERCE HEREIN AS TO SHREVEPORT CASE.

The express provision of the Act to Regulate Commerce is that it has no application to transportation "wholly within one state, and not shipped to or from a foreign country, or from or to any state or country aforesaid." Proviso of Section 1.

See:

Missouri Pacific Ry. Co. v. *Larrabee Mills*, 211 U. S. 612, 621.

Minnesota Rate Case, *supra*, page 418.

From the specifications of error it appears that the position taken by the carrier is that this order in fact operates to regulate interstate commerce, because coal might come from other states and pass over the same rails from Galewood to Morton Grove, and, on the assumption that all coal is competitive, this carrier might be forced by commercial conditions to accord to interstate shippers the same rate for its portion of the haul. It is obvious that if this possibility renders the order void, then state authority over rates is extinguished, for there is no part of a railroad where such a situation could not arise. (Minnesota Rate Case, *supra*, page 395.) But this contention does not go to the validity of the order or the power of the state to promulgate it. It goes to its possible commercial effect, and if the effect of the order in the future is to cause a discrimination against interstate shippers, such shippers

will then have the right to complain of the interstate rate and alleged discrimination to the Interstate Commerce Commission. This is the effect of the decision of this court in *Houston, East and West Railway Co.* v. *United States*, 234 U. S. 342.

There the validity of an order of the Interstate Commerce Commission was attacked on the ground that it exceeded the authority of that commission. The Commission found that the carriers operating in Texas unjustly discriminated against Shreveport, Louisiana, by maintaining rates within the State of Texas lower than the rates to common points from Shreveport. The lower intrastate rates were compelled by an order of the Railroad and Warehouse Commission of Texas. The interstate rates, with which the state rates conflicted, were fixed by the federal commission. No one in that case claimed that the order of the Texas board was void. This court held that the Interstate Commerce Commission had the power and jurisdiction to adjudge and remove an undue discrimination against interstate traffic resulting from intrastate rates. This court said (p. 357):

> "Undoubtedly—in the absence of a finding by the Commission of unjust discrimination—intrastate rates were left to be fixed by the carrier and subject to the authority of the states, or of the agencies created by the states. This was the question recently decided by this court in the *Minnesota Rate Cases, supra.*"

The decision in the *Shreveport case* was foreshadowed in the opinion of this court in the *Minnesota rate cases.* At page 419 of that opinion this court states that in the event the state by the exer-

cise of its power of regulation gives an undue or unreasonable preference or advantage to a point inside the state as against a locality outside the state, it would be a matter "primarily for the investigation and determination of the Interstate Commerce Commission and not for the courts. * * * In the present case there has been no finding by the Interstate Commerce Commission of unjust discrimination violative of the act; and no action of that body is before us for review."

So in the case at bar, there has been no finding by the Interstate Commerce Commission that the rate of 20 cents a ton on coal from Galewood to Morton Grove causes an unjust discrimination against interstate shippers.

This court has declined to accede to the proposition that the power of the state to regulate rates extends only to points in the State where there is no competition with traffic under interstate rates, or that the power of the State to regulate rates can be exercised only in prescribing rates on an equal or higher basis than those that are fixed by the carrier for interstate transportation. (The Minnesota Rate Cases, 230 U. S., at page 417.)

There is, of course, nothing to prevent the carrier giving to shippers of coal in other states the same rate on their coal when hauled from Galewood to Morton Grove as the state Commission has found just and reasonable and prescribed for Illinois coal. It will be presumed that the rates fixed by the State Commission are reasonable and just, and if in the future this carrier accords to shippers located outside of Illinois the same rate for the carriage of

their product from Galewood to Morton Grove, it will be doing nothing more than that which under the law and in fairness it should do, namely, accord them a just and reasonable rate.

III.

THE DECISION OF THE INTERSTATE COMMERCE COMMISSION IN POEHLMANN BROS. COMPANY V. CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY, 30 I. C. C. REP. 89.

Specification of Error No. 8 filed by the plaintiff in error in this case refers to the decision of the Interstate Commerce Commission on a complaint filed by Poehlmann Bros. Company against the Chicago, Milwaukee & St. Paul Railway Company. That decision and order are not in the record in this case, and this court has no means of judicially knowing the substance or effect of the order. While between the same parties, it is another case, and the proceedings therein are not a matter for judicial notice so that they can be pleaded now in argument to affect or invalidate the order here attacked.

Cantrell v. *Seaverns*, 168 Ill. 165.
Streeter v. *Streeter*, 43 Ill. 155.

In Wigmore on Evidence, Volume 4, Section 2579, page 44, the rule is stated:

> "Courts will not take judicial notice of any legal proceedings other than those transacting at the moment in its presence."

But aside from the fact that the order of the Interstate Commerce Commission is not in evidence in this case and no part of this record, it is a fact which

will be found on examination of the decision in that case (30 I. C. C. Rep. 89) that there is no basis for the contention that the order of the State Commission here involved conflicts with the order of the Interstate Commerce Commission.

The case before the Interstate Commerce Commission involved rates on coal from Pennsylvania, Maryland, Ohio and Indiana to Morton Grove. The complaint was dismissed because the Chicago, Milwaukee & St. Paul Railway Company was the only party defendant and the Commission held that the traffic involved was through traffic, and other carriers, necessary parties, were vitally affected, the Commission saying (30 I. C. C. Rep. at page 92):

> "The rate specifically attacked, although a separately established rate of the delivering line, can not be considered entirely apart from its relationship to the through rate for the through haul from interstate points of origin. Some regard must be had to the measure of the through rate as an entirety, and neither the through rate nor the carriers responsible for it and participating in it are before us in this proceeding.
>
> Considering the absence of evidence as to the reasonableness of the through rate, and the unsatisfactory evidence as to the separately established rates under attack, *we must refrain from expressing any conclusion upon the reasonableness of either rate.*"

It will thus be seen that the Interstate Commerce Commission did not pass upon the question as to what is a reasonable rate from Galewood to Morton Grove, either as a separately established charge, or as a factor in a through rate, applicable to the movement of coal from points in other states.

The federal order was purely negative. It was similar to the dismissal of a bill in equity for want of necessary parties. It adjudicated nothing.

It was argued by the learned counsel for the plaintiff in error before the Supreme Court of Illinois that the order of the Illinois Board conflicted with the order of the Interstate Commerce Commission. Touching that contention the Supreme Court of Illinois said, 268 Ill. 49, 56:

> "(4) Counsel for appellant say that the same complaint was made by the Poehlmann Bros. Company to the Inter-state Commerce Commission, which upheld the forty-cent rate and dismissed the complaint, and a copy of the opinion of that Commission is included in the argument. Counsel are evidently mistaken. The Poehlmann Bros. Company represented to the Inter-state Commerce Commission that a part of the coal used by it came from West Virginia and other sections outside of this state, and complained that the local rate of forty cents from Galewood to Morton Grove was unreasonable. The appellant was the only party defendant, and the Commission said that the comparisons made by the complainant were in respect to through rates; that the traffic in question was through traffic, although the rate between Galewood and Morton Grove was separately established; and that such a rate could not be considered apart from its relationship to the through rate from interstate points of origin. Neither the through rate nor the carriers responsible for it were before the Commission, and therefore it declined to express any opinion upon the reasonableness of the rate, and did not uphold it or decide anything about it."

While it is true that the case before the Board of Railroad and Warehouse Commissioners in Illinois was submitted on substantially the same evidence

as was presented to the Interstate Commerce Commission, nevertheless, the State Board had the right to take its own view of such evidence and to conclude that it was sufficient on which to reduce the local Illinois rate.

Chrisman v. *Miller*, 197 U. S. 313.

Mammoth Mining Company v. *Grand Central Mining Co.*, 213 U. S. 72.

Clipper Mining Co. v. *Eli Mining & Smelting Co.*, 194 U. S. 220.

Likewise the State Commission had the full power and right to consider the rate from Galewood to Morton Grove as a distinct and separate charge and to regulate the same with respect to its reasonableness. The fundamental requirement of the Illinois Law is that rates of common carriers shall be just and reasonable *per se*. The rate from Morton Grove to Galewood was not as to Illinois traffic a segment of a joint through rate. There are no joint through rates from mines in Illinois to Morton Grove. The State Commission found that the rate of 40 cents a ton was separately made by the Chicago, Milwaukee & St. Paul Railroad on its own responsibility, collected for its own service and retained by it, and it was therefore a distinct and separate charge subject to regulation. Manifestly, this was a sound view of the matter. There is in this case no semblance of a conflict between a rate fixed by the State Commission between two points in the state and a rate fixed by the Interstate Commerce Commission for the same two points applicable to interstate traffic.

IV.

THIS RECORD AFFIRMATIVELY SHOWS THAT THE ORDER ATTACHED IS REASONABLE AND JUST.

There is no evidence in this record on which to consider any contention that the rates fixed by the State Commission were confiscatory and that the order takes property without due process of law.

Atlantic Coast Line Railroad Co. v. *Florida*, 203 U. S. 256.

Seaboard Air Line v. *Florida*, 203 U. S. 261.

Northern Pacific v. *North Dakota*, 216 U. S. 579.

Wood v. *Vandalia Railroad*, 231 U. S. 1.

Louisville & Nashville R. R. v. *Garrett*, 231 U. S. 298.

Louisville & Nashville R. R. v. *Finn*, 235 U. S. 601.

Judson on Interstate Commerce, 3d Ed., Section 133.

The assignments of error do not raise the question of confiscation. (Statement of Errors Relied Upon, Transcript, page 49.)

We contend, therefore, that this court will not consider or review the sufficiency of the evidence on which the order here involved was based. However, to prevent any impression that this order was not sustained by substantial evidence, we beg leave to call the attention of the court to the evidence in the transcript.

The rate of 40 cents a ton on coal and on manure from Galewood to Morton Grove, a distance of about

12 miles, was shown to be unreasonable by a comparison with a great number of other rates for similar distances, published by this carrier and other carriers in and around Chicago. (Transcript 31, 36.)

The rate was particularly compared with the rate of 20 cents to Edgewater through a more congested part of Cook County, requiring a haul of practically the same distance as the haul from Galewood to Morton Grove. (Transcript 45.) The rate was also compared with the rate of 60 cents a ton on coal from Chicago to Milwaukee, a distance of about 85 miles. (Transcript 33.) Many other lower rates to nearby points were cited.

The rate on coke from Chicago to Milwaukee via this same carrier is 45 cents a ton. (St. Paul I. C. C. B-1962, page 20, Item 40.) Coke is a commodity of higher value, and requires more of the equipment of the carrier to transport an equal number of tons and the rate on coke is usually about 25 per cent. higher than the rate on soft coal. A rate of 40 cents on coal for 12 miles can not be justified in the face of a rate of 45 cents a ton on coke for 85 miles, the 12-mile haul along the same rails.

The evidence shows that the average rate on coal from shipping points in Illinois and Indiana to Chicago on a ton-mile basis to be approximately 3.5 mills, or less than ½ of a cent per ton per mile. The rate established by the State Commission in this case would yield a revenue of 1.818 cents per ton per mile on coal and a revenue of 2.272 cents per ton per mile on manure. A rate which yields a per-ton-mile revenue as great as these rates can not be said to be unreasonably low.

The evidence shows that the average car of coal weighs 42½ tons. The rate fixed by the State Commission would yield a return of $8.50 per car for the movement from Galewood to Morton Grove. The evidence further shows that a car of manure weighs approximately the same as a car of coal and the movement of a car of manure from Galewood to Morton Grove under the new rate would yield $10.62 per car.

A rate of 40 cents a ton on bituminous coal for a movement of 12 miles is so out of proportion to the usual rates on coal, that it condemns itself as unfair and exorbitant. There are no special or unusual conditions attached to the transportation in question. The conditions are ideal for a low charge. The transfer is made to the tracks of the defendant by the Belt Railway at Galewood. A train is made up for the north, and at Morton Grove cars for defendant in error are set out on its sidings. There are no grades or unusual operating conditions.

The Board of Railroad and Warehouse Commissioners concluded as follows:

> "After a careful investigation of the rates charged by the defendant Chicago, Milwaukee & St. Paul Railway Company from Galewood to other stations on its lines of road in the vicinity of Morton Grove, and also an investigation of the rates charged by other defendant roads in that locality, for similar distance, when compared with the charge made by the defendant Chicago, Milwaukee & St. Paul Railway Company from Galewood to Morton Grove, the Commission believes that said charge of forty cents per net ton to be an unreasonable charge."

In *Louisville & Nashville R. R. Co.* v. *United*

States, 238 U. S., at page 1, this court approved an order of the Interstate Commerce Commission reducing a rate on evidence similar in effect to that which appears in the Transcript in the case at bar. There this court said (p. 15):

> "Giving the widest possible effect to the fact that mere comparison between rates does not necessarily tend to establish the reasonableness of either, it is still true that, when one of many rates is found to be higher than all others, there may arise a presumption that the single rate is high. And when to that is added the fact that some of the comparative and lower rates had been prescribed by the Commission, there was at least a *prima facie* standard which, after allowing for dissimilarity in conditions, might be used along with all the other evidence in order to test the reasonableness of the Nashville rate. No one of those facts was conclusive, for the character of the country through which the two roads had been built might differ. One might run through a level, thickly populated territory, —the other might have steep grades, long tunnels and a roadway expensive to maintain. The capital invested, the traffic hauled, the cost of operation and the earnings might differ, but nevertheless what was shown to be a reasonable rate on one, might, after allowing for the dissimilarity in conditions, earnings and cost, be a factor in determining the reasonableness of the rate on the other. The report in this case shows that the rate-making body had before it much and varied evidence of this character. After considering it as a whole, the Commission found that the $1-rate on coal shipped from the Kentucky mines to Nashville was unreasonable. In the light of these findings we can not say that the facts set out in the report, do not support the order."

The language of this court in *Interstate Com-*

merce Commission v. *Louisville & Nashville R. R.*, 227 U. S. 88, applies here with equal force:

> "The pleadings charged that the new rates were unjust in themselves and by comparison with others. This was denied by the carrier. The Commission considered evidence and made findings relating to rates which the carrier insists had been compelled by competition, and were not a proper standard by which to measure those here involved. The value of such evidence necessarily varies according to the circumstances, but the weight to be given it is peculiarly for the body experienced in such matters and familiar with the complexities, intricacies and history of rate-making in each section of the country."

We respectfully submit that the evidence appearing in the Transcript in the case at bar shows that the rate of 40 cents a ton from Galewood to Morton Grove was unreasonably high.

CONCLUSION.

From the foregoing we conclude and respectfully submit:

1. The claim that the order in question is violative of the Commerce Clause of the Federal Constitution, or the Act to Regulate Commerce, lacks basis in fact or in law.

2. The contention that the order of the State Commission is in conflict with an order of the Interstate Commerce Commission in another case between the same parties, is untenable.

3. It affirmatively appears from the transcript that the order was based upon ample evidence and was in every respect a reasonable and just order.

Respectfully submitted,

M. F. GALLAGHER,
Counsel for Defendant in Error.

APPENDIX.

Sections of "An Act to establish a Board of Railroad and Warehouse Commissioners and prescribing their powers and duties" in force in Illinois at the time of the decision of this case.

Sec. 20. Said Railroad and Warehouse Commission is hereby given jurisdiction over all common carriers within this state.

Sec. 24. It shall be the duty of every common carrier, subject to the provisions of this Act, to provide and furnish such transportation at reasonable rates upon an order made by the Railroad and Warehouse Commission, upon proper application and proper showing of the necessity therefor, upon a hearing before said commission.

Sec. 31. The commission are hereby empowered and authorized to hear and determine all questions arising under this Act, upon giving due notice to all persons, individuals or corporations interested therein, and to enter an order in relation thereto.

Sec. 32. The Railroad and Warehouse Commissioners are hereby directed to make for each of the common carriers doing business in this state, as soon as practicable, upon giving due notice to all parties interested therein, and after a hearing in relation thereto, a schedule of reasonable maximum rates or charges, classification, rules and regulations, for the transportation of persons or property on or by each of said common carriers, between points wholly

within this state; and said schedule shall in all suits brought against such common carriers, wherein is in any way involved the charges of any such common carriers for the transportation of any person or property, or unjust discrimination, shall be deemed and taken in all courts of this state as *prima facie* evidence that the rates therein affixed are reasonable maximum rates and charges for the transportation of persons and property upon the common carriers for which said schedules may have been respectively prepared. Said commissioners may, from time to time, as often as circumstances require, change and revise said schedules. It shall be proper for said commissioners, either upon their own initiative or upon complaint, to enter upon a hearing for the purpose of investigating the necessity of any such revision. When any schedule shall have been made or revised as aforesaid, it shall be the duty of said commissioners to have the same printed by the state printer, under the contract governing state printing, and said commissioners shall furnish two copies of said printed schedule to the president, general mananger, general superintendent or receiver of each common carrier doing business in this state. All such schedules heretofore or hereafter made shall be received and held in all suits as *prima facie*, the schedules of said commissioners without further proof than the production of the schedules desired to be used as evidence with a certificate of the Railroad and Warehouse Commissioners that the same is a true copy of a schedule prepared by them for the carrier therein named. And every such common carrier so receiving any such schedule from said Railroad and Warehouse Commissioners, shall cause

same to be plainly printed and copies for the use of the public shall be kept in every depot, station or office of such carrier where passengers or property, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected. Such schedules shall include and contain not only the rates, fares or charges to be charged, collected or received for the transportation of persons or property between points wholly within the State of Illinois, but also shall state separately all terminal charges, storage, icing charges or other charges which said Railroad and Warehouse Commissioners may require, or privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect or determine any part or the aggregate of such aforesaid rates, fares or charges of the value of the services rendered to the passenger, shipper or consignee: *Provided,* nothing in this section or Act shall be construed to repeal an Act to establish and regulate the maximum rate of charges for the transportation of passengers by corporations or companies operating and controlling railroads in part or in whole in this state and to provide penalties for the violation of the provisions thereof, and repealing all Acts and parts of Acts in conflict therewith, approved May 27, 1907, in force July 1, 1907.

Sec. 35. Any party to any proceedings before this commission, or any party affected by any order thereof, may appeal to the Circuit Court of Sangamon County at any time within 20 days after service of a copy of such order on the parties of record in said proceedings. The party taking such an appeal

shall file with the secretary of said commission at the office of said commission in Springfield, Illinois, written notice of said appeal. The commission, upon the filing of such notice of appeal, shall, within five days thereafter, file with the clerk of said Circuit Court of Sangamon County, Illinois, a certified copy of the pleadings and order appealed from. The party serving such notice of appeal shall, within five days after the service of said notice upon said commission, file a copy of said notice with proof of service with the clerk of said court to which such appeal is taken, and thereupon said Circuit Court shall have jurisdiction over said appeal and the same shall be entered upon the records of said Circuit Court and shall be tried therein according to the rules relating to the trial of chancery suits so far as the same are applicable. The Railroad and Warehouse Commission shall be designated as complainant in said Circuit Court, and the common carrier or warehouseman as defendant; no further pleadings than those already filed before the commission shall be necessary. Such order made by said commission shall be *prima facie* evidence of the matters therein stated, and the order shall be *prima facie* reasonable, and the burden of proof upon all issues raised by the appeal, shall be on the appellant. If said court shall determine that the order appealed from is lawful and reasonable, it shall be affirmed and the order enforced as provided by law; otherwise it shall be vacated and set aside. If an appeal is not taken, such order shall become final and it shall thereupon be the duty of the carrier or warehouseman affected to comply therewith. All orders from which no appeal is taken, as provided by law,

shall be deemed to be in full force and effect for all purposes from the time when the right to appeal from such order expires. When no appeal is taken from an order, as herein provided, parties affected by such order shall be deemed to have waived the right to have the merits of said controversy reviewed by a court and there shall be no trial of the merits of or re-examination of the facts of any controversy in which such order was made by any court to which application may be made for a writ to enforce the same. Appeals from all final orders and judgments entered in review by the said Circuit Court of the action of the commission, shall go directly to the Supreme Court, and shall be governed by the rules applying to chancery cases appealed to said Supreme Court.